

**COMMITTEE AMENDMENT FORM**

DATE 11/28/01

COMMITTEE CD/HR

PAGE#(S) \_\_\_\_\_

ORDINANCE# \_\_\_\_\_

SECTION(S) \_\_\_\_\_

RESOLUTION# 01-R-1792

PARAGRAPH \_\_\_\_\_

**AMENDMENT:**

To amend Page 21 of the agreement between the City of Atlanta and the Atlanta-Fulton County Recreation Authority with additional language and deletion of certain words as shown on the attached page.

## ARTICLE VIII

### ASSIGNMENT AND SPACE LEASES

#### 8.1 Assignment by TBS.

(a) TBS shall have the right to assign the Leasehold Estate under this Lease Agreement, in whole or in part, with the consent of the Authority, such consent not to be unreasonably withheld, conditioned or delayed. The Authority shall promptly execute and deliver such documents and instruments as TBS or any assignee of the Leasehold Estate under this Lease Agreement shall reasonably request to evidence such assignment of the Leasehold Estate under this Lease Agreement. Notwithstanding the foregoing, TBS may, without the consent of the Authority, (i) assign or sublease the Leasehold Estate under this Lease Agreement, in whole or in part, to a corporation or entity into or with which TBS shall be merged or consolidated or to which substantially all of TBS' assets, stock or other equity interest may be transferred, or to a corporation or entity which controls, is controlled by or is under common control with TBS (a "Related Entity"), (ii) permit any Related Entity to use the Leased Assets or any part thereof but only for so long as said occupant continues to be a Related Entity, or (iii) assign the Leasehold Estate under this Lease Agreement in connection with or pursuant to (1) a Leasehold Mortgage, (2) a sale/leaseback transaction, (3) a "synthetic" Lease "synthetic lease" transaction or (4) ~~other similar~~ (4) any other financing arrangement; provided, however, TBS shall obtain the approval of the City of Atlanta as to any financing arrangement that reduces or otherwise lessens any ad valorem taxes which would otherwise be payable to the City of Atlanta with respect to the Project Improvements.

(b) Any assignee of the Leasehold Estate under this Lease Agreement (an "Assignee") shall succeed to the Leasehold Estate under this Lease Agreement, subject, however, to all duties, covenants, and obligations of TBS under this Lease Agreement arising out of or in connection with events occurring on or after (but not before) the effective date of said assignment. Upon an assignment by TBS of the entire Leasehold Estate under this Lease Agreement (or upon any further transfer by an Assignee) and upon such Assignee's due execution and delivery to the Authority of such Assignee's written assumption of all duties, covenants, and obligations of TBS under this Lease Agreement arising out of or in connection with events occurring on or after (but not before) the effective date of said assignment, TBS (or said Assignee) shall be released from any liabilities, duties, covenants, or obligations under this Lease Agreement arising out of or in connection with events occurring on or after the effective date of said assignment (but not from any liabilities, duties, covenants, or obligations under this Lease Agreement arising out of or in connection with events occurring before the effective date of said assignment) of the Leasehold Estate under this Lease Agreement; provided, however, that the provisions of this Section 8.1(b) pertaining to the release of TBS shall not apply to (i) Leasehold Mortgagees, as to which the provisions of Section 7.4 shall govern, or (ii) an assignment by TBS to a Related Entity, in which event TBS shall remain primarily liable for the Related Entity's liabilities, duties, covenants and obligations arising under this Lease Agreement.

provided further that any financing arrangements involving a public development authority shall be first presented to the Atlanta Development Authority (ADA) for action by the ADA Board.

**A RESOLUTION**

**BY COMMUNITY DEVELOPMENT/HUMAN  
RESOURCES COMMITTEE**

**01-R-1792**

**A RESOLUTION EXPRESSING THE CITY OF ATLANTA'S OBJECTION TO THE ASSIGNMENT OF AIR RIGHTS BY TURNER BROADCASTING SYSTEM, INC. (TBS) (PURSUANT TO AN AIR RIGHTS LEASE WITH THE CITY OF ATLANTA-FULTON COUNTY RECREATION AUTHORITY) TO THE FULTON COUNTY DEVELOPMENT AUTHORITY OR TO ANY OTHER TAX-EXEMPT ENTITY IN CONNECTION WITH TBS' PROPOSED DEVELOPMENT OF AN OFFICE TOWER AND RETAIL COMPLEX AT THE INTERSECTION OF MARIETTA STREET AND CENTENNIAL OLYMPIC BOULEVARD, BECAUSE OF THE SEVERE NEGATIVE FINANCIAL IMPACT WHICH SUCH AN ASSIGNMENT WOULD HAVE UPON THE CITY'S ABILITY TO ISSUE TAX INCREMENT BONDS FOR THE WESTSIDE TAX ALLOCATION DISTRICT (IN WHICH THE TBS SITE IS LOCATED) THEREBY SIGNIFICANTLY DIMINISHING THE CITY'S DEVELOPMENT EFFORTS FOR THE AREA WITH REGARD TO THE INFRASTRUCTURE IMPROVEMENTS WHICH ARE TO BE FUNDED WITH THE PROCEEDS OF SAID BONDS AND FOR OTHER PURPOSES.**

WHEREAS, pursuant to the Participation Agreement dated November 1, 1996 regarding the development of Phillips Arena, Turner Broadcasting System, Inc. (TBS) has the right to lease the air rights above the publicly financed parking deck, from the City of Atlanta-Fulton County Recreation Authority ( the Authority) at no additional fee or other compensation; and

WHEREAS, TBS is contemplating leasing said air rights from the Authority and thereafter assigning its leasehold interest in said air rights to the Fulton County Development Authority or some other tax-exempt entity; and

**WHEREAS**, because the assignment of said air rights by TBS in the manner described above, would negatively impact the City's ability to issue and service the debt related to tax increment bonds in the Westside Tax Allocation District wherein the TBS Project is located, the Authority has requested guidance from the City as to whether the Authority should agree that TBS be permitted to make such an assignment; and

**WHEREAS**, there is no indication that the failure of the Authority to consent to such an assignment of TBS leasehold interest in the subject air rights, would cause the TBS Project not to occur; and

**WHEREAS**, it is not in the best interest of the City or of the Westside Tax Allocation District to allow TBS to assign its leasehold interest in the air rights to the Fulton County Development Authority or to any other tax-exempt entity.

**THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES  
AS FOLLOWS:**

**SECTION 1:** The City of Atlanta hereby expresses its objection to the assignment of air rights by Turner Broadcasting System, Inc. (TBS) pursuant to an air rights lease with the City of Atlanta-Fulton County Recreation Authority), to the Fulton County Development Authority or to any other tax-exempt entity in connection with TBS' proposed development of an office tower and retail complex at the intersection of Marietta Street and Centennial Olympic Park Boulevard. Because of the severe negative financial impact which such an assignment would have upon the City's ability to issue tax increment bonds for the Westside Tax Allocation District (in which the TBS site is located), the City's development efforts will be significantly diminished for the area with regard to the

infrastructure improvements which are to be funded with the proceeds of said bonds.

**SECTION 2:** All resolutions or parts of resolutions in conflict herewith are hereby rescinded.